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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Rapiscan Systems, Inc.

File: B-401773.2; B-401773.3

Date: March 15, 2010

Daniel R. Forman, Esq., and Jonathan M. Baker, Esq., Crowell & Moring, for the protester.

James J. McCullough, Esq., and Steven A. Alerding, Esq., Fried Frank Harris Shriver & Jacobson, LLP, for Science Applications International Corporation, an intervenor.

Dennis J. Gallagher, Esq., Department of State, for the agency.

Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where solicitation limited competition to vendors holding Federal Supply Schedule (FSS) contract for required items, and successful vendor's FSS contract did not include all required items, issuance of purchase order was improper; while non-FSS micro-purchase (\$3,000) items properly may be purchased under an FSS solicitation, that was not the case here, since, while non-FSS items were priced at \$0, quotation stated that price of non-FSS items was included in FSS item prices.

DECISION

Rapiscan Systems, Inc., of Arlington, Virginia, protests the issuance of a purchase order to Science Applications International Corporation (SAIC), of San Diego, California, under request for quotations (RFQ) No. S-WHARC-09-Q-0030, issued by the U.S. Department of State (DOS) for gamma ray vehicle and cargo inspection systems. The RFQ was limited to vendors holding a Federal Supply Schedule (FSS) contract for the required items, and Rapiscan principally argues that it was improper to issue the order to SAIC because that firm's FSS contract does not include all required items.

We sustain the protest.

The RFQ, which specified an SAIC product on a brand name or equal basis, was open to vendors holding contracts under FSS 84, category 426-4K, Metal and Bomb Detection Equipment, and required quotations to indicate the vendor's FSS contract number. The RFQ included eight line items (CLIN). The agency initially issued the purchase order to Rapiscan, which submitted the lowest priced, technically acceptable quotation. However, SAIC protested issuance of the order on the basis that Rapiscan's FSS contract did not list all eight of the required items at the time the order was issued. We sustained the protest, agreeing that the issuance was improper, and the agency subsequently canceled the order, consistent with our recommendation. Science Applications Int'l Corp., B-401773, Nov. 10, 2009, 2009 CPD ¶ 229. Subsequently, the agency determined that all of the required items were included on SAIC's FSS contract, and issued a purchase order to SAIC.

Rapiscan asserts that the agency improperly issued the purchase order to SAIC because SAIC's FSS contract in fact does not include three of the required items--CLIN 7, freight; the installation required for the VACIS Gamma Ray System under CLIN 1; and the installation required under CLIN 8 for the replacement energy source.

The FSS program provides federal agencies a simplified process for obtaining commonly used commercial supplies and services. Federal Acquisition Regulation (FAR) § 8.401(a). FSS procedures satisfy the requirement for full and open competition. 41 U.S.C. § 259(b) (3) (2006); FAR § 6.102(d) (3). Non-FSS products and services may not be purchased using FSS procedures; instead, their purchase requires compliance with applicable procurement laws and regulations, including those requiring the use of competitive procedures. Symlicity Corp., B-291902, Apr. 29, 2003, 2003 CPD ¶ 89 at 4. Where an agency announces its intention to order from an existing FSS contractor, all items quoted and ordered are required to be within the scope of the vendor's FSS contract. Tarheel Specialties, Inc., B-298197, B-298197.2, July 17, 2006, 2006 CPD ¶ 140 at 4. The sole exception to this requirement is for items that do not exceed the micro-purchase threshold of \$3,000, since such items properly may be purchased outside the normal competition requirements in any case. See SMS Sys. Maint. Servs., Inc., B-284550.2, Aug. 4, 2000, 2000 CPD ¶ 127 at 2; see also CourtSmart Digital Sys., Inc., B-292995.2, B-292995.3, Feb. 13, 2004, 2004 CPD ¶ 79 at 5; Pyxis Corp., B-282469, B-282469.2, July 15, 1999, 99-2 CPD ¶ 18 at 4.

With respect to CLIN 7, freight, the agency concedes that SAIC's FSS contract does not include an item for freight, but argues that it nevertheless properly issued the purchase order to SAIC because its quoted price for the item does not exceed the \$3,000 micro-purchase threshold.¹

¹ The agency argues that the other two items did not preclude issuance of the purchase order to SAIC because, as to item 1, SAIC's system was truck-mounted, so
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We find that CLIN 7 did not qualify as a micro-purchase item. SAIC's initial quotation for CLIN 7 indicated that freight was an open market--rather than an FSS contract--item, and showed a unit price of \$6,832. SAIC Quotation § 4.1. SAIC then submitted a revised quotation on June 13 that again showed a unit price of \$6,832 for CLIN 7, but further indicated that this price was being discounted by \$6,832, resulting in a CLIN 7 price of \$0. However, the quotation also expressly stated that the price for CLIN 7 was "included in unit price of Item #1," indicating a shifting of the initially quoted price for line item 7 to line item 1. Revised Quotation § 4.1. Based on this evidence, while SAIC's quotation showed a price of \$0 for freight, this price, in effect, was illusory; its quoted total price actually included an amount for freight that exceeded the \$3,000 micro-purchase threshold. Under these circumstances, we find that CLIN 7 freight cannot be considered a micro-purchase item under SAIC's quotation. It follows that, since freight was a required item and was not included on SAIC's FSS contract, the purchase order could not properly be issued to SAIC. The micro-purchase exception is a narrow one and was not intended as a means for vendors to provide non-FSS items as micro-purchase items to avoid the general rule that all items under an FSS solicitation must be included on the successful vendor's FSS contract. See SMS Sys. Maint. Servs., Inc., supra.

Based on the foregoing, we sustain the protest. We recommend that the agency cancel SAIC's purchase order and issue a new order to the vendor next in line under the terms of the RFQ, and in accordance with this decision. If the agency determines that there are no acceptable quotations, it should cancel the RFQ and resolicit its requirements. We also recommend that Rapiscan be reimbursed the costs of filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1) (2009). Rapiscan should submit its certified claim for costs, detailing the time expended and cost incurred, directly to the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Lynn H. Gibson
Acting General Counsel

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no further installation was required, and as to item 8, SAIC's FSS contract in fact included installation of the replacement energy source. Since we have concluded that the order was improper because SAIC's FSS contract did not include freight, we need not resolve these questions.